



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-1353

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116333.

The Texas Department of Public Safety (the "department") received a request for information concerning a motor vehicle accident that occurred on March 26, 1998. You claim that all the requested information, except for the accident report, is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

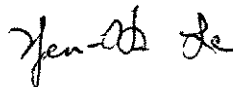
To show that section 552.103 is applicable, the department must demonstrate that 1) litigation is pending or reasonably anticipated and 2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. A governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act (TTCA) or applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

You have submitted a claim letter which you state meets the notice requirements of the TTCA. We conclude that litigation is reasonably anticipated, and that the documents submitted by the department are related to the reasonably anticipated litigation for purposes of section 552.103. Thus, you may withhold the requested information from public disclosure under section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103, and it must be disclosed. Moreover, the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 116333

Enclosures: Submitted documents

cc: Mr. Rodney Withers
Claims Representative
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(w/o enclosures)